

CHARLES HALLIGAN ADAIR
Attorney at Law
1140 Union Street, Ste. 201
San Diego, CA 92101
Telephone: (619) 233-3161
Fax: (619) 233-3127
State Bar # 52163

Document 6

Filed 06/02/2008

Page 1 of 9

Attorney for: Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JULIO LUCAS-GARCIA,

Defendant

CASE NO: 08CR1127-BEN

NOTICE OF MOTION AND
MOTION FOR DISCOVERY

Date: 6/2/08

Time: 2:00 PM

NOTICE OF MOTION

TO: CAROL C. LAM, UNITED STATES ATTORNEY, AND CARLA BRESSLER,
ASSISTANT UNITED STATES ATTORNEY.

PLEASE TAKE NOTICE that on the date and at the time and place indicated above,
or as soon thereafter as counsel may be heard, defendant , by and through his attorney,
CHARLES H. ADAIR, will present the following:

MOTION FOR DISCOVERY

Comes now, defendant , through his attorney, who moves for an order requiring the
government to comply with the following discovery requests in the attached Points and
Authorities in Support of Motion for Discovery.

3 Authorities, the files and records in the above-entitled case, and any other materials which may
4 be brought to this Court's attention prior to or at the time of the hearing on this motion.

5 Date: 5/14/08

6 S/CHARLES H. ADAIR
7 CHARLES H. ADAIR,
8 Attorney for Defendant
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Attorney for Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JULIO LUCAS-GARCIA,

Defendant

CASE NO: 08CR1127-BEN

POINTS AND AUTHORITIES IN SUPPORT
OF MOTION FOR DISCOVERY

DATE: 6/2/08

TIME: 2:00 PM

1

POINTS AND AUTHORITIES

Mr. LUCAS-GARCIA, defendant in the above-entitled case, hereby moves for an order requiring the government to comply with the following discovery requests:

(1) Statements. All written and oral statements made by defendant. This request includes, but is not limited to, any rough notes, records, transcripts or other documents and tapes in which statements of defendant are contained. The substance of statements the government intends to introduce are discoverable under Fed. R.Crim. P. 16(a)(1)(A) and Brady v. Maryland.

1 (2) Documents, statements, reports, tangible evidence. Production of all documents, statements,
2 Case 3:08-cr-01625-BEN Document 6 Filed 06/02/2008 Page 4 of 9
agents' reports, and tangible evidence favorable to the defendant on the issue of guilt or which affect
3 the credibility of the government's case. This evidence must be produced pursuant to Brady v.
4 Maryland and United States v. Agurs, 96 S.Ct. 2392 (1976).

5 (3) Prior record/other act evidence. All evidence, documents, records of judgments and
6 convictions, photographs and tangible evidence, and information pertaining to any prior arrests and
7 convictions or prior bad acts. Evidence of prior record is available under Fed. R. Crim. P.
8 16(a)(1)(B). Evidence of prior record is available under Fed. R. Crim.P. 16(a)(1)(C) and Fed. R.
9 Evid. 404(b) and 609. This request also includes defendant's "rap" sheet and/or NCIC computer
10 check on defendant.

11 (4) Seized evidence. All evidence seized as a result of any search, either warrantless or with a
12 warrant, in this case. This is available under Fed. R. Crim. P. 16(a)(1)(C).

13 (5) Agent's reports, notes, memos. All arrest reports, investigator's notes memos from arresting
14 officers, sworn statements, and prosecution reports pertaining to defendant. These reports are
15 available under Fed. R. Crim. P. 16(a)(1)(B) and (C); and Fed. R. Crim. P. 26.2 and 12(I). This
16 request includes affidavits in support of search warrants and the lists of items seized in the execution
17 of any search warrant. In addition, any witness interview notes that could be considered to be
18 statements attributable to the witness are requested. See Goldberg v. United States, 96 S.Ct. 1338
19 (1976).

20 (6) Other documents/tangible objects. All other documents and tangible objects, including
21 photographs, books, papers, documents, or copies or portions thereof which are material to defendant
22 defense or intended for use in the government's case-in-chief or were obtained from or belong to
23 defendant. Specifically requested also are all documents, items and other information seized pursuant
24 to any search. This is available under Brady and Fed. R. Crim. P. 16(a)(1)(C).

25 (7) Bias of government witnesses. Any evidence that any prospective government witness is
26 biased or prejudiced against defendant or has a motive to falsify or distort his/her testimony. See
27 Pennsylvania v. Ritchie, 480 U.S. 39 (1987); United States v. Strifler, 851 F.2d 1197 (9th Cir. 1988).

government witness has engaged in any criminal act whether or not resulting in a conviction. See
F.R.E. Rule 608(b) and Brady.

(9) Investigation of witnesses. Any evidence that any prospective witness is under investigation
by federal, state or local authorities for any criminal or official misconduct. United States v. Chitty,
760 F.2d 425 (2d Cir.), 474 U.S. 945 (1985).

(10) Evidence regarding ability to testify. Any evidence, including any medical or psychiatric
reports or evaluations, tending to show that any prospective witness's ability to perceive, remember,
communicate, or tell the truth is impaired: and any evidence that a witness has ever used narcotics or
other controlled substance, or has ever been an alcoholic. United States v. Strifler, 851 F.2d 1179
(9th Cir.1988); Chavis v. North Carolina, 637 F. 2d 213, 224 (4th Cir. 1980); United States v. Butler,
567 F.2d 885 (9th Cir. 1978).

(11) Personnel files. It is requested that the government review each agent's personnel file for
review for information requested in paragraphs (7) -(10) above and determine whether there is any
impeaching information contained in the files. See United States v. Henthorn, 931 F.2d 29 (9th Cir.
1991).

(12) Government Witnesses. The name and last known address of each prospective
government witness. See United States v. Neap, 834 F.2d 1311 (7th Cir. 1987); United States v.
Tucker, 716 F.2d 583 (9th Cir. 1983) (failure to interview government witnesses by counsel is
ineffective); United States v. Cook, 608 F.2d 1175, 1181 (9th Cir. 1979) (defense has equal right to
talk to witnesses).

(13) Other witnesses. The name and last known address of every witness to the alleged
offenses (or any of the overt acts committed in furtherance thereof) who will not be called as a
government witness. United States v. Cadet, 727 F.2d 1469 (9th Cir. 1984).

(14) Favorable testimony. The name of any witness who made an arguably favorable
statement concerning defendant or who could not identify him or who was unsure of his identity or
participation in the crime charged. Jackson v. Wainwright, 390 F.2d 288 (5th Cir. 1968); Chavis v.

4 (15) Specific inquiries of agents. It is requested that the government make specific inquire of
5 each government agent connected to the case for the information requested in Paragraph s 12-14.
6 United States v. Jackson, 780 F.2d 1305 (6th Cir. 1986); United States v. Butler, 567 F.2d 885,889
7 (9th Cir. 1978)

8 (16) Rule 26.2 Material/Timing of production It is requested that the government provide all
9 material available pursuant to Fed. R. Crim. P. 26.2, sufficiently in advance of trial or motion
10 hearings so as to avoid unnecessary delay prior to cross examination.

11 (17) Experts/resumes. The curriculum vitae of any and all experts the government intends to
12 call at trial, including any and all books, treatises or other papers written by the expert which is
13 relevant to the testimony.

14 (18) Expert's reports and summaries. Production of any and all reports of any examinations
15 or tests, is requested pursuant to Rule 16(a)(1)(D). In additions, it is requested that the government
16 disclose a written summary of testimony the government intends to use under FRE 702,703 or 705.
17 As required by Rule 16(a)(1)(E), the summaries must describe the witnesses' opinions, the bases and
18 the reasons therefore and the witnesses' qualifications. See Fed. R. Crim. P. 16(a)(1)(E) (added
19 December 1, 1993).

20 (19) Confidential Informant(s) and related information. It is requested that the government
21 reveal the identify of any and all confidential informants who were percipient witnesses to the
22 charges in this case and information regarding any promises made to the CI and the information
23 provided by the CI.

24 (20) Promises made or "deals" with government witnesses. Under Giglio v. United States,
25 405 U.S. 150 (1972), the government must provide all promises of consideration given to witnesses.
26 See also United States v. Shaffer, 789 F.2d 682 (9th Cir. 1986).
27
28

proceedings is requested in order to determine whether there has been compliance with Rule 6 with
3 regard to attendance and the number of grand jurors voting on this indictment. See Rule 6(b)-(d).

4 (22) Grand Jury Transcripts. All grand jury transcripts are requested in accordance with Rule
5 6.

6 (23) Statement by Government of Refusal to Provide. If the government has any of the
above-requested items or the items required by the rules, law, or court order, but refuses to provide
8 them to the defense, Defendant requests a statement as to the existence of the items and the refusal to
9 provide them.

10 Dated: 5/14/08

Respectfully submitted,

11
12 S/CHARLES H. ADAIR

13 CHARLES H. ADAIR,
14 Attorney for Defendant
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CHARLES HALLIGAN ADAIR
Attorney at Law
1140 Union Street, Ste. 201
San Diego, CA 92101
Telephone: (619) 233-3161
Fax: (619) 233-3127
State Bar No: 52163

Attorney for: Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JULIO LUCAS-GARCIA,

Defendant

CASE NO: 08CR1127-BEN

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that:

I, CHARLES H. ADAIR, a citizen of the United States over the age of 18 years and a resident of San Diego County, California, whose business address is 1140 Union Street, # 201, San Diego California, 92101; and is not a party to the above-entitled action and subsequent to electronically filing with the Clerk of the Court, I personally served a copy of:

NOTICE OF MOTION, MOTION FOR DISCOVERY & P's & A's IN SUPPORT OF
MOTION FOR DISCOVERY

TO: CARLA BRESSLER, AUSA
UNITED STATES ATTORNEY'S OFFICE
880 FRONT STREET. ROOM 6293
SAN DIEGO, CA 92101

BY: electronically filing

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 14th, 2008

S/CHARLES H. ADAIR
CHARLES H. ADAIR